

REC'D TN  
REGULATORY AUTH.

October 18, 1999

'99 OCT 22 PM 3 06

Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville TN 37243-0505

OFFICE OF THE  
EXECUTIVE SECRETARY

Re: Proposed Rules 1220-4-11-.01+  
Telemarketing

99-00645

To the Tennessee Regulatory Authority,

The Northwestern Mutual Life Insurance Company of Milwaukee Wisconsin wishes to offer comments on the above-referenced proposal. Northwestern Mutual Life is licensed to offer life insurance, annuities, and disability income insurance in Tennessee, through our licensed and contracted insurance agents. It will not be possible for us to attend the hearing scheduled for October 20 and we appreciate your consideration of these written comments and making them part of the formal record of the hearing.

To some extent the proposed rules mirror provisions already found in the Tennessee statutes. However, the rules as drafted repeatedly use undefined terms, or use defined terms in irregular ways, vary from the dictates of the statutes with new substantive requirements, refer to compliance matters which do not in fact exist, and in general lack the clarity needed to impose the highly punitive burdens proposed.

Our life insurance agents make sales calls on a regular basis. Sales of life insurance for us are never consummated over the telephone, and at most the agent seeks the opportunity to visit personally with the individual, but the calls may meet the definition of "telephone solicitation" in the regulation. Because sale of insurance is already heavily regulated by the Tennessee Insurance Department, we ask that this regulation exempt insurance sales except to the extent determined by the Tennessee insurance regulators to be necessary to be consistent with the existing regulator scheme for insurance solicitation. As drafted this proposal has the potential to work great disruption to the orderly working of the life insurance marketplace.

If the Authority is determined not to grant such an exemption, we have the following substantive comments.

#### Use of Undefined Terms

The proposal uses terms which are not those contained in the definition section 1220-4-11-.01. For example, the word "telemarketer" is defined, but the substantive part of the regulation uses instead an undefined phrase, "telemarketing company." Likewise, "not-for-profit" is defined but the regulation also uses the phrase "non-profit organization" in 1220-4-11-.14(1)(b). As a mutual life insurance company, Northwestern qualifies as a non-profit organization but it appears probable that the intent was to use the phrase "not-for-profit." These are just a few examples of terms being defined and not used, and terms used which are nowhere defined.

#### Exceeding the Dictates of the Underlying Statute

Under 1220-4-11-.11, it is the duty of a telemarketer to purchase the database from the Authority. The regulation seems to allow the telemarketer the option of purchasing the list on paper or by way of the internet. The regulation however goes on to make a substantive requirement that the telemarketing

**FILE**

company use the latest version of the database but that requirement is contained only under the internet option. Thus as drafted the regulation does not require a telemarketing company taking the paper list option to use the latest version of the database.

Also, this section contains an internal contradiction. According to 1220-4-11-.11, only the telephone number of subscribers electing not to receive telemarketing calls will be provided to the telemarketing company. But under 1220-4-11-.12(1)(b), the subscriber remains on the list until they request the Authority to "remove their name." This means that once a number is on the list it will remain there even after it is no longer assigned to a person who has elected not to be on the list. And it means that the list cannot be unified with other mandated do not call lists, such as Florida's. At a time when area codes are changing around the country on a yearly basis, at some point the list that Tennessee proposes to maintain, and purports to force telemarketers to purchase (in spite of obvious Constitutional objections to such obligations), will be largely meaningless.

Since the regulation purports to update the list on a monthly basis that means the requirement to obtain the database, either on paper or over the internet, is monthly. This is not part of the underlying statute and represents both a compliance burden to those entities such as us who are not the primary targets of the legislation or this regulation. This should be yearly or quarterly at most.

Tennessee may want to consider the Florida approach to a do not call list, that is that the list is purged each year and the person wanting to be on the list should renew their listing, including any new telephone numbers, on that yearly basis.

#### Non-Existent Provisions

Section 1220-4-11-.10(3) says that the Tennessee list will incorporate Tennessee subscribers to the Federal Communications Commission's Do Not Call database. First, we believe this is a misreading of FCC requirements, which obligate each party making telephone solicitations to maintain its own do not call list. We do not believe there is any such FCC list that is maintained in a reliable way. Second, the FCC requirements are sufficiently different in scope and nature (and consequences for violations) that it would represent an artificial expansion of the Tennessee database to incorporate any other list created under different assumptions and guidelines.

Thank you for your consideration of these comments.

The Northwestern Mutual Life  
Insurance Company.  
David K. Nelson  
Assistant General Counsel

cc: Theresa L. Sorota (ACLI - by FAX)  
Sandra Barton  
Mona Garcia

Doc 129853

99-00645